



STAFF REPORT

DATE: MAY 17, 2011
TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: ROD FOSTER, CITY MANAGER/GENERAL MANAGER
PREPARED BY: AMER JAKHER, DIRECTOR OF PUBLIC WORKS & UTILITY SERVICES *AJ*
SUBJECT: APPROVE REPAIRS TO THE GAS TURBINE AT THE AGUA MANSA POWER PLANT

RECOMMENDED ACTION

It is recommended that City Council approve the contract with IHI Corporation (IHI) for repairs to the gas turbine at the Agua Mansa Power Plant (AMPP), in an amount not-to-exceed \$528,500, and concur with the City Manager's basis for an exception to formal competitive bidding in accordance with Municipal Code 3.08.140 (e).

GOAL STATEMENT

The proposed action will support the City's goals to provide safe, reliable, affordable, and environmentally sustainable electric service.

BACKGROUND

The Agua Mansa Power Plant (AMPP) became operational in July 2003 to meet the energy requirements of Colton Electric Utility's (CEU) customers. In addition to meeting the energy requirements of the Utility's customers, the AMPP enables the CEU to meet its Resource Adequacy Program goals, as adopted May 2, 2006, in City Council Resolution R-54-06. Resource Adequacy is a mandatory planning and procurement process, required by the California ISO, to ensure adequate resources to serve all customers. Without the capacity provided by AMPP operations, the CEU would have to purchase capacity elsewhere.

ISSUES/ANALYSIS

Each year, routine inspection and maintenance are performed on equipment at the AMPP. During a routine borescope inspection earlier this year, it was discovered that erosion on the HTP stage 2 nozzle has degraded beyond serviceable limits. Additionally, a failure occurred in the buss at the plant. These conditions have forced the shutdown of the gas turbine and the AMPP is inoperable until repairs can be made. Electric Utility staff is in the process of making repairs to the buss, however, the repairs to the borescope need to be made by a factory authorized representative.

Additionally, in order to retain the operating permits through SCAQMD, the AMPP must undergo periodic Relative Accuracy Test Audits (RATA). The RATA must be completed in the second quarter of 2011, or the SCAQMD may issue penalties or revoke the operating permit. If this occurs, the AMPP could be held to new and stricter emissions requirements. The testing cannot be performed until the repairs are completed.

In accordance with the Operations and Maintenance Agreement, E.I. Colton, LLC, the plant operator, has the authority to solicit proposals for materials and services required to maintain operations at the AMPP. However, the contract requires that the operator receive City Council approval for any purchase or work which exceeds \$50,000. Due to the nature of the maintenance work required (this is not a formal public works project), and the limited number of contractors licensed and authorized to perform the work, the proposals were received through an informal bidding process as noted below. The operator did include the City's standard maintenance agreement terms and conditions, including the City's insurance requirements for contractors. Colton Municipal Code, Section 3.08.140 (e) Exceptions to Competitive Bidding – Non-Public Projects, allows the formal bidding process to be waived "when the City Manager determines that it is in the best interest of the City and its administrative operations to dispense with public bidding for non-public projects under this chapter."

The City Manager, pending Council support, has determined that it is in the best interests of the City and its administrative operations to award this maintenance agreement pursuant to the informal bid process, described below, since time is of the essence; there are a limited number of contractors licensed and authorized to perform the work; and, staff believes that the informal bidding process has revealed the lowest priced, cost effective option for the City.

As time is of the essence, E.I. Colton, LLC, under supervision of City staff requested and received proposals from the manufacturer, GE Power & Water, as well as three contractors licensed and authorized by the manufacturer to repair the equipment through an informal bid process. Each contractor provided estimated costs for the on-site removal and installation of 2nd stage rotatable nozzle assembly. E.I. Colton, LLC has also included a contingency amount to cover any other repairs which may be discovered once the equipment is broken down and rebuilt, as well as any other unforeseen or required costs. An analysis of each of the four proposals, showing estimated price, repair time, and a contingency amount in the event further damage is discovered when the equipment is opened for repair, is attached.

E. I. Colton and City staff have carefully evaluated the bids and are recommending award to the low bidder, IHI. Bids for the repairs range from an estimated \$528,500 (IHI) to \$770,000 (GE), including the contingency amount. It is important that the AMPP be operational before summer, when temperatures and demand typically begin to rise. Once awarded, the repairs should be completed in three weeks.

The City Council should also be aware that contractors who perform this type of work on power plants routinely demand certain revisions to standard public agency agreements, including revisions to indemnity, warranty and limitations of liability provisions. Staff reviewed such

requested revisions from not only IHI, but also TransCanada, and the City Attorney has determined that IHI's required revisions are much less extensive and that the City may consider them to be within tolerable risk management parameters. While the TransCanada warranty language was particularly burdensome and difficult to meet, the IHI warranty language is fairly typical, in that the City is required to show that the work was not performed in accordance with the specifications. The warranty periods are the same (12 months), but the TransCanada warranty is also tied to 8,000 hours (which we understand is essentially close to running full time for a year). With respect to the indemnity, TransCanada would completely replace the City's language and add a mirror indemnity by the City, but IHI's request is only to remove "consequential damages" from the indemnity, which should be a tolerable risk for the City in this case. Regarding limitation of liability, the IHI limitation is twice the contract price, whereas the TransCanada limitation is based on the contract price. The City Attorney and staff always have concerns with limitations based on the contract price, because there is no real correlation between the two, but this is certainly an industry standard concern. If the work must be redone and there are other damages, you can exceed the cap, so IHI's cap is clearly more favorable to the City.

Staff is in the process of developing a Request for Proposal (RFP) for Partnership Opportunities and Operations and Maintenance of the Agua Mansa Power Plant. The RFP is currently under review by the City Attorney and it is anticipated to be released in the next two to three weeks. The results of this RFP will provide options for the City to consider regarding the ongoing operations of the power plant.

FISCAL IMPACTS

Funds for the required repairs are available and budgeted in the Agua Mansa Power Plant operating budget for FY10-11.

ALTERNATIVES

1. City Council may decide not to award a contract to IHI for repairs to the Agua Mansa Power Plant, incurring additional costs for replacement power and capacity.
2. City Council may decide to award a contract with a higher cost contractor for the repairs.
3. Provide alternate direction to staff.

Attachments: Bid Analysis
Maintenance Agreement with IHI Corporation

CITY OF COLTON
BID ANALYSIS

AGUA MANSA POWER PLANT HPT STAGE 2 NOZZLE ASSEMBLY REPLACEMENT				
DESCRIPTION	GENERAL ELECTRIC AMOUNT	IHI INC. AMOUNT	MTU MAINTENANCE AMOUNT	TRANSCANADA TURBINE AMOUNT
On-site removal and installation of new / rebuilt rotatable 2nd stage nozzle assembly. Estimated time for repairs is 10 to 15 Days	\$670,000.00	<u>\$428,500.00</u>	\$475,000.00	\$505,020.00
Recommended contingency amount of \$100,000 to cover any unforeseen work and variances to the estimate.	\$100,000.00	<u>\$100,000.00</u>	\$100,000.00	\$100,000.00
Total Bid, including Contingency:	\$770,000.00	\$528,500.00	\$575,000.00	\$605,020.00
TOTAL OF AWARD:		<u>\$528,500.00</u>		

CITY OF COLTON
AGREEMENT FOR MAINTENANCE SERVICES

1. PARTIES AND DATE.

This Agreement is made and entered into this 17th day of May, 2011 by and between the City of Colton, a municipal corporation of the State of California, located at 650 North La Cadena Drive, Colton, California 92324, County of San Bernardino, State of California, (hereinafter referred to as "City") and IHI Corporation, a Delaware corporation with its principal place of business at 150 East 52nd Street, 24th Floor, New York, New York 10022 (hereinafter referred to as "Contractor"). City and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

2. RECITALS.

2.1 Contractor.

Contractor desires to perform and assume responsibility for the provision of certain maintenance services required by the City on the terms and conditions set forth in this Agreement. Contractor represents that it is experienced in providing gas turbine repair services to public clients, that it and its employees or subcontractors have all necessary licenses and permits to perform the Services in the State of California, and that is familiar with the plans of City.

2.2 Project.

City desires to engage Contractor to render such services for the Agua Mansa Power Plant HPT Stage 2 Nozzle Assembly Repair ("Project") as set forth in this Agreement

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Contractor promises and agrees to furnish to the Owner all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional gas turbine repair and maintenance services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from May 18, 2011 to June 30, 2011, unless earlier terminated as provided herein. Contractor shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

3.2 Responsibilities of Contractor.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Contractor or under its supervision. Contractor will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Contractor on an independent contractor basis and not as an employee. Contractor retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Contractor shall also not be employees of City and shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Contractor shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Contractor represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Contractor's conformance with the Schedule, City shall respond to Contractor's submittals in a timely manner. Upon request of City, Contractor shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Contractor shall be subject to the approval of City.

3.2.4 City's Representative. The City hereby designates Amer Jakher, Director of Public Works and Utility Services, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.2.5 Contractor's Representative. Contractor hereby designates [___INSERT NAME OR TITLE___], or his or her designee, to act as its representative for the performance of this Agreement ("Contractor's Representative"). Contractor's Representative shall have full authority to represent and act on behalf of the Contractor for all purposes under this Agreement. The Contractor's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.6 Coordination of Services. Contractor agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.2.7 Standard of Care; Performance of Employees. Contractor shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Services. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in Section 3.2.8 and the indemnification provisions of this Agreement, Contractor shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Contractor's failure to comply with the standard of care provided for herein. Any employee of the Contractor or its sub-contractors who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Contractor and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.8 Warranty.

3.2.8.1 Scope of Warranty. Contractor warrants to City that the Materials or any part repaired or replaced hereof shall be free from defects in material, workmanship, title and the Services will be performed in accordance with mutually agreed specifications.

3.2.8.2 Warranty Term. The defect liability period shall be twelve (12) months from the date of completion of the respective Services to City.

3.2.8.3 Warranty Claims. If during the defect liability period, any defect should be found in material, workmanship, title or the Services performed by Contractor, Contractor shall promptly, at its cost, repair, replace, or otherwise correct such defect as well as any damage to the Materials caused by such defect. The method or repair or correction shall be within the reasonable discretion of Contractor provided that the gas turbines operate properly. Contractor shall not be responsible for the repair, replacement, or correction of any defect or of any damage to the Materials arising out of, or resulting from, any of the following causes:

- (A) Improper operation or maintenance of the Materials by City;
- (B) Operation of the Materials in a manner inconsistent with the specifications provided in the Agreement;
- (C) Erosion or corrosion which is not attributable to a defect in the Materials provided by Contractor;
- (D) Normal wear and tear; and/or

(E) Acts of God.

3.2.9 Laws and Regulations. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Services. If the Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Contractor shall be solely responsible for all costs arising therefrom. Contractor shall defend, indemnify and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.10 Insurance.

3.2.10.1 Time for Compliance. Contractor shall not commence Work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this section.

3.2.10.2 Minimum Requirements. Contractor shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Contractor, its agents, representatives, employees or subcontractors. Contractor shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. Contractor shall maintain limits no less than: (1) *General Liability*: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

3.2.10.3 Insurance Endorsements. The insurance policies shall contain the following provisions, or Contractor shall provide endorsements on forms supplied or approved by the City to add the following provisions to the insurance policies:

(A) General Liability. The general liability policy shall be endorsed to state that: (1) the City, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insured with respect to the Work or operations performed by or on behalf of the Contractor, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents and volunteers shall be excess of the Contractor's insurance and shall not be called upon to contribute with it in any way.

(B) Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) the City, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Contractor or for which the Contractor is responsible; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents and volunteers shall be excess of the Contractor's insurance and shall not be called upon to contribute with it in any way.

(C) Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Contractor.

(D) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its directors, officials, officers, employees, agents and volunteers.

3.2.10.4 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents and volunteers.

3.2.10.5 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Contractor shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-

insured retentions as respects the City, its directors, officials, officers, employees, agents and volunteers; or (2) the Contractor shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

3.2.10.6 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the City.

3.2.10.7 Verification of Coverage. Contractor shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the City if requested. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.2.11 Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.2.12 Prevailing Wages. Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. City shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.2.13 Bonds.

3.2.13.1 Performance Bond. If specifically requested by City in Exhibit "B" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Agreement a Performance Bond in the amount of the total, not-to-exceed compensation indicated in this Agreement, and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City.

3.2.13.2 Payment Bond. If required by law or otherwise specifically requested by City in Exhibit "B" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Agreement a Payment Bond in the amount of the total, not-to-exceed compensation indicated in this Agreement, and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City.

3.2.13.3 Bond Provisions. Should, in City's sole opinion, any bond become insufficient or any surety be found to be unsatisfactory, Contractor shall renew or replace the affected bond within 10 days of receiving notice from City. In the event the surety or Contractor intends to reduce or cancel any required bond, at least thirty (30) days prior written notice shall be given to the City, and Contractor shall post acceptable replacement bonds at least ten (10) days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Agreement until any replacement bonds required by this Section are accepted by the City. To the extent, if any, that the total compensation is increased in accordance with the Agreement, the Contractor shall, upon request of the City, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the City. To the extent available, the bonds shall further provide that no change or alteration of the Agreement (including, without limitation, an increase in the total compensation, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor, will release the surety. If the Contractor fails to furnish any required bond, the City may terminate this Agreement for cause.

3.2.13.4 Surety Qualifications. Only bonds executed by an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, shall be accepted. The surety must be a California-admitted surety with a current A.M. Best's rating no less than A:VIII and satisfactory to the City. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with Section 995.660 of the California Code of Civil Procedure, and proof of such is provided to the City.

3.3 **Fees and Payments.**

3.3.1 Compensation. Contractor shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed five hundred twenty-eight thousand five hundred dollars and no cents (\$528,500.00) without written

approval of City Council. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Contractor shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Contractor. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Contractor shall not be reimbursed for any expenses unless authorized in writing by City.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Contractor perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Contractor shall not perform, nor be compensated for, Extra Work without written authorization from City's Representative.

3.4 Accounting Records.

3.4.1 Maintenance and Inspection. Contractor shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Contractor shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.5 General Provisions.

3.5.1 Termination of Agreement.

3.5.1.1 Grounds for Termination. City may, by written notice to Contractor, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Contractor of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Contractor shall be compensated only for those services which have been adequately rendered to City, and Contractor shall be entitled to no further compensation. Contractor may not terminate this Agreement except for cause.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Contractor to provide all finished or unfinished Documents and Data and other information of any kind prepared by Contractor in connection with the performance of Services

under this Agreement. Contractor shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

CONTRACTOR:

IHI CORPORATION
Manabu Tatebayashi, Executive Vice President
150 East 52nd Street, 24th Floor
New York, NY 10022

CITY:

City of Colton
650 North La Cadena Drive
Colton, CA 92324
Attn: Amer Jakher, Director of Public Works & Utility Services

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.3 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.4 Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.5.5 Indemnification. Contractor shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions or willful misconduct of Contractor, its officials, officers, employees, agents, consultants and contractors arising out of or in connection with the performance of the Services or any breach of its obligations with respect to this Agreement, including without limitation, all direct

damages resulting therefrom and the payment of attorneys fees and other related costs and expenses. Contractor shall defend, at Contractor's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against City, its directors, officials, officers, employees, agents or volunteers. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Contractor shall reimburse City and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials officers, employees, agents or volunteers.

3.5.6 Limitation of Liability

3.5.6.1 Limitation. Notwithstanding anything to the contrary provided in the Agreement, the aggregate liability of Contractor to City shall not exceed the amount equal to twice the Contract Price.

3.5.6.2 Consequential Damages. Contractor shall in no event be liable to City by way of indemnity or by reason of any breach of the Agreement or in tort or otherwise for loss of use of the Materials or any part thereof or for loss of production, loss of profit, or loss of any contract, or for any indirect, special or consequential loss or damabge that may be suffered by City in connection with the Agreement.

3.5.6.3 Election of Remedies. The City and the Contractor intend that their respective rights, obligations and liabilities, as provided for in this Agreement, shall be exhaustive of the rights, obligations and liabilities of each of them to the other arising out of, under or in connection with this Agreement or the Services, whether such rights, obligations and liability arise in respect of or in consequence of a breach of this Agreement or statutory duty or a tortuous or negligent act or omission which gives rise to remedy at common law. Accordingly, except as expressly provided for in this Agreement, neither party shall be obligated or liable to the other in respect of any damages or losses suffered by the other which arise out of, under or in connection with this Agreement or the Services, whether by reason or in consequence of any breach or of statutory duty or tortuous or negligent act or omission.

3.5.7 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.5.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County.

3.5.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.10 City's Right to Employ Other Contractors. City reserves right to employ other contractors in connection with this Project.

3.5.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.5.12 Assignment or Transfer. Contractor shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.13 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Contractor include all personnel, employees, agents, and subcontractors of Contractor, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.5.14 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.15 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.5.16 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.17 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.18 Prohibited Interests. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this

warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.19 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Contractor shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.5.20 Labor Certification. By its signature hereunder, Contractor certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5.21 Authority to Enter Agreement. Contractor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.22 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.6 Subcontracting.

3.6.1 Prior Approval Required. Contractor shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. Contractor has notified City that it shall sub-contract with Reed Services, Inc., to perform field work on site. Contractor shall be solely responsible for ensuring that all work performed by Reed Services, Inc., complies with the terms of this Agreement and that Reed Services, Inc., and its agents and employees, are covered under the insurance requirements set forth in Section 3.2.10.

[SIGNATURES ON NEXT PAGE]

CITY OF COLTON

IHI Corporation

By: _____
Rod Foster
City Manager

By: _____
IHI Corporation
Manabu Tatebayashi

Attest:

Eileen C. Gomez, City Clerk

Approved as to Form:

Best Best & Krieger LLP
City Attorney

City of Colton Risk Management

EXHIBIT "A"
SCOPE OF MAINTENANCE SERVICES

Contractor shall make on-site repairs to the HPT Stage 2 nozzle and shrouds of the LM6000PC gas turbine, located at the Agua Mansa Power Plant, 2040 W. Agua Mansa Road, Colton, California, 92324, in order to bring the engine back to a serviceable condition, in accordance with the attached proposal from Contractor:

EXHIBIT "B"
SCHEDULE OF MAINTENANCE SERVICES AND BONDING

City and Contractor shall agree upon a start date upon execution of this Agreement. All work shall be completed no later than June 30, 2011.

In accordance with the requirements of Section 3.2.13, Contractor shall provide a payment and performance bond in the full amount of the contract as set forth on Exhibit "C", including the contingency.

EXHIBIT "C"
COMPENSATION

Contractor shall submit an itemized statement after completion of the Work. City shall, within 30 days of receiving such statement, review the statement and pay all approved charges. Compensation shall not exceed five hundred twenty-eight thousand five hundred dollars and no cents, (\$528,500.00), which includes a contingency amount of \$100,000.00. Charges for the exchange of the rotatable HPT Stage 2 nozzle assembly shall be billed as follows:

Material.....	\$ 105,700.00
Labor.....	\$ 40,100.00
Outside Source Repair.....	\$ 102,000.00
Insurance & Others.....	\$ 34,200.00
Transportation.....	\$ 12,800.00
SB.....	\$ 5,500.00
Field Labor.....	\$ 115,600.00
Field Material.....	\$ 12,600.00
Total (without contingency).....	<u>\$428,500.00</u>

Contingency (in case additional repairs are necessary).....NTE \$100,000.00

